

PART 4274 - DIRECT AND INSURED LOANMAKING

Subpart D - Intermediary Relending Program (IRP)

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Exhibit A - Checklist - Intermediary Relending Program Loan to Intermediary.
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PART 4274 - DIRECT AND INSURED LOANMAKING

Subpart D - Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted primarily towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

(c) Proposed intermediaries are required to identify any known relationship or association with a United States Department of Agriculture (USDA) Rural Development employee. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to USDA Rural Development employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. *RD Instruction 2045-BB also restricts assistance to Agency employees.*

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available in the National Office or any Rural Development State Office. *Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published in the Federal Register as part of the regulation.*

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§ 4274.302 Definitions and abbreviations.

(a) General definitions. The following definitions are applicable to the terms used in this subpart:

Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

Agency IRP loan funds. Cash proceeds of a loan obtained from the Agency through IRP, including the portion of an IRP revolving fund directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds.

Agricultural production or agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Initial Agency IRP loan. The first IRP loan made by the Agency to an intermediary.

Intermediary. The entity requesting or receiving Agency IRP loan funds for establishing a revolving fund and relending to ultimate recipients.

IRP revolving fund. A group of assets, obtained through or related to an Agency IRP loan and recorded by the intermediary in a bookkeeping account or set of accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an intermediary.

Processing office or officer. The processing office for an IRP application is the office within the Agency administrative organization with assigned authority and responsibility to process the application. The processing office is the primary contact for the proposed intermediary and maintains the official application case file. The processing officer for an application is the person in charge of the processing office. The processing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to applications under the office's jurisdiction.

§ 4274.302(a) (Con.)

Revolved funds. The cash portion of an IRP revolving fund that is not composed of Agency loan funds, including funds that are repayments of Agency IRP loans and including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Rural area. All territory of a State that is not within the outer boundary of any city having a population of 25,000 or more, according to the latest decennial census.

Servicing office or officer. The servicing office for an IRP loan is the office within the Agency administrative organization with assigned authority and responsibility to service the loan. The servicing office is the primary contact for the borrower and maintains the official case file after the loan is closed. The servicing officer for a loan is the person in charge of the servicing office. The servicing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office's jurisdiction.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subsequent IRP loan. An IRP loan from the Agency to an intermediary that has received one or more IRP loans previously.

Technical assistance. A function performed for the benefit of an ultimate recipient or proposed ultimate recipient, which is a problem solving activity. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(b) Abbreviations. The following are applicable to this subpart:

B&I - Business and Industry

IRP - Intermediary Relending Program

OGC - Office of the General Counsel

OIG - Office of Inspector General

OMB - Office of Management and Budget

RBS - Rural Business-Cooperative Service, or any successor agency

RDLF - Rural Development Loan Fund

USDA - United States Department of Agriculture

§ 4274.303 [Reserved]

§ 4274.304 Loans made prior to effective date of regulations.
(Added 08-05-98, PN 294.)

For loans closed before February 6, 1998, the loan agreement executed at loan closing will be interpreted in accordance with the IRP regulations in effect when the loan was closed. Exceptions will be allowed as follows:

(a) An intermediary may agree, by amendment to the loan agreement, to have its loan serviced under new regulations effective on February 6, 1998. The intermediary must accept the entire revised regulation. It may not pick portions of one regulation and portions of another. Exhibit D provides standard language that may be used to amend loan agreements to bring old loans under new regulations. All intermediaries with loans closed prior to February 6, 1998 should be offered the opportunity and encouraged to amend their loan agreements to bring the loans under the regulations that became effective on February 6, 1998.

§ 4274.304 (Con.)

(b) If an intermediary's loan agreement requires assignment of promissory notes and collateral documents to the Agency, the servicing officer may return to the intermediary all original promissory notes and assignment documents held by the Agency and stop obtaining such documents for future loans to ultimate recipients, provided:

- (1) the repayment status of the intermediary's loan is current;*
- (2) the intermediary is in compliance with the loan agreement and work plan for the intermediary's loan; and*
- (3) the intermediary officials are doing an adequate job of servicing their loans.*

§§ 4274.305 - 4274.306 [Reserved]

§ 4274.307 Eligibility requirements - Intermediary.

(a) The types of entities which may become intermediaries are:

- (1) Private nonprofit corporations.**
- (2) Public agencies - Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.**
- (3) Indian groups - Indian tribes on a Federal or State reservation or other federally recognized tribal groups.**
- (4) Cooperatives - Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.**

§ 4274.307 (Con.)

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing experience and expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

(4) Have capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the Intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.

§ 4274.308 Eligibility requirements - Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(4) Must, along with its principal officers (including their immediate family) hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members.

(c) Any delinquent debt to the Federal Government, by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309 - 4274.312 [Reserved]

§ 4274.313 Administrative responsibility.

(a) *Except as provided in this section, the processing and servicing office for an IRP application or loan is the State Office for the State where the intermediary's headquarters is located.*

(b) *State Directors may delegate in writing processing and servicing office responsibility to District Offices, provided that the State Director determines the District Office staff has had adequate training on the IRP.*

(c) *The processing and servicing office for intermediaries headquartered in the District of Columbia is the National Office.*

§ 4274.314 Loan purposes.

(a) **Intermediaries.** Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) **Ultimate recipients.** Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

- (7) Start-up operating costs and working capital.
- (8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.
- (9) Feasibility studies.
- (10) Debt refinancing.
 - (i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully and pay off the loan rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and
 - (ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and
 - (iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.
- (11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.
- (12) Hotels, motels, tourist homes, bed and breakfast establishments, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.319.

§ 4274.314(b) (Con.)

(13) Educational institutions.

(14) Revolving lines of credit: Provided,

(i) The portion of the intermediary's total IRP revolving fund that is committed to or in use for revolving lines of credit will not exceed 25 percent at any time;

(ii) All ultimate recipients receiving revolving lines of credit will be required to reduce the outstanding balance of the revolving line of credit to zero at least one time each year;

(iii) All revolving lines of credit will be approved by the intermediary for a specific maximum amount and for a specific maximum time period, not to exceed 2 years;

(iv) The intermediary will provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description will include evidence that the intermediary has an adequate system for:

(A) Interest calculations on varying balances, and

(B) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable; and

(v) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the Agency may terminate the intermediary's authority to use the IRP revolving fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

§§ 4274.315 - 4274.318 [Reserved]

§ 4274.319 Ineligible loan purposes.

Agency IRP loan funds may not be used for payment of the intermediary's administrative costs or expenses. The IRP revolving fund may not be used for:

(a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(b) Distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(c) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(d) Assistance to government employees, military personnel, or principals or employees of the intermediary or organizations for which such persons are directors or officers or in which they have ownership of 20 percent or more.

(e) A loan to an ultimate recipient which has an application pending with or a loan outstanding from another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(f) Agricultural production.

(g) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(h) Community antenna television services or facilities.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.

(k) Lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

§ 4274.320 Loan terms.

(a) No loan to an intermediary shall be extended for a period exceeding 30 years. Interest and principal payments will be scheduled at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not more than 3 years.

(b) Loans made by an intermediary to an ultimate recipient from the IRP revolving fund will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient. The term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan.

§§ 4274.321 - 4274.324 [Reserved]

§ 4274.325 Interest rates.

(a) Loans made by the Agency pursuant to this subpart shall bear interest at a fixed rate of 1 percent per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients on loans from the IRP revolving fund shall be negotiated by the intermediary and ultimate recipient. The rate must be within limits established by the intermediary's work plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving fund's debt service costs, reserve for bad debts, and administrative costs.

§ 4274.326 Security.

(a) Intermediaries. Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, The Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Agency's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients must be assignable.

(b) Ultimate recipients. Security for a loan from an intermediary's IRP revolving fund to an ultimate recipient will be negotiated between the intermediary and ultimate recipient, within the general security policies established by the intermediary and approved by the Agency.

§§ 4274.327 - 4274-330 [Reserved]

§ 4274.331 Loan limits.

(a) Intermediary.

(1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within 1 year after loan closing.

(2) The initial Agency IRP loan as defined in § 4274.302(a) will not exceed \$2 million.

§ 4274.331(a) (Con.)

(3) Intermediaries that have received one or more IRP loans may apply for and be considered for subsequent IRP loans provided:

(i) At least 80 percent of the Agency IRP loan funds approved for the intermediary have been disbursed to eligible ultimate recipients. *The Agency interprets this to mean if the intermediary has received multiple loans, at least 80 percent of each previous loan must have been disbursed;*

(Revised 11-22-00, PN 326.)

(ii) The intermediary is promptly relending all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectible accounts;

(iii) The outstanding loans of the intermediary's IRP revolving fund are generally sound; and

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with the Agency.

(4) Subsequent loans will not exceed \$1 million each and not more than one loan will be approved for an intermediary in any one fiscal year.

(5) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed \$15 million at any time.

(b) Ultimate recipients. Loans from intermediaries to ultimate recipients using the IRP revolving fund must not exceed the lesser of:

(1) \$250,000; or

(2) Seventy five percent of the total cost of the ultimate recipient's project for which the loan is being made.

(c) Portfolio. No more than 25 percent of an IRP loan approved may be used for loans to ultimate recipients that exceed \$150,000. This limit does not apply to revolved funds.

§ 4274.332 Post award requirements.

(a) Applicability. Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency

may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the "IRP revolving fund," such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. Whenever this subpart imposes a requirement on loans made by intermediaries from "Agency IRP loan funds," without specific reference to the IRP revolving fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds, and will not apply to loans made from revolved funds.

(b) Maintenance of IRP revolving fund. For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

(1) The portion of the IRP revolving loan fund that consists of Agency IRP loan funds, on a last-in-first-out basis, may only be used for making loans in accordance with § 4274.314 of this subpart. The portion of the IRP revolving fund which consists of revolved funds may be used for debt service, reasonable administrative costs, or reserves in accordance with this section, or for making additional loans.

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

§ 4274.332(b) (Con.)

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary's portfolio of loans. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained.

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients.

(5) All reserves and other cash in the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in accounts in banks or other financial institutions. Such accounts will be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

(6) If an intermediary receives more than one IRP loan, it need not establish and maintain a separate IRP revolving loan fund for each loan; it may combine them and maintain only one IRP revolving fund, unless the Agency requires separate IRP revolving funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements as required by the Agency.

§§ 4274.333 - 4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) Intergovernmental consultation. The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to

be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the Agency loan funds for the ultimate recipient. Prior to the Agency's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. (See RD Instruction 1940-J (available in any Rural Development State Office)).

(b) Environmental requirements.

(1) Unless specifically modified by this section, the requirements of part 1940, subpart G, of this title apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) For each application for a loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary (*Forms RD 1940-20, "Request for Environmental Information,"*) and complete a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time. Neither the completion of the environmental assessment nor the approval of the application is an Agency commitment to the use of loan funds for a specific project; therefore, no public notification requirements for a Class II assessment will apply to the application.

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will complete the environmental review required by part 1940, subpart G, of this title, including public notification requirements. The results of this review will be used by the Agency in making its decision on concurrence in the proposed loan. The Agency will prepare an Environmental Impact Statement for any application for a loan from Agency IRP loan funds determined to have a significant effect on the quality of the human environment.

(c) Equal opportunity and nondiscrimination requirements.

(1) In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The regulations contained in subpart E of part 1901 of this title apply to this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d-4, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans with disabilities Act. *If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Civil Rights Staff.*

(4) *Civil rights compliance reviews should be conducted by the Agency within the first year after loan closing and thereafter at intervals of not more than 3 years until the Agency IRP loan funds have all been loaned to ultimate recipients. The results of the review should be documented on Form RD 400-8, "Compliance Review (Nondiscrimination by Recipients of Financial Assistance through Farmers Home Administration)," and appropriate documentation attached to substantiate findings of compliance or noncompliance. The original Form RD 400-8 should be maintained in the case file with copies forwarded to the Rural Development State Civil Rights Coordinator. If the intermediary is not in compliance, copies should also be immediately forwarded to the Director, Civil Rights Staff, with a recommendation for action to be taken.*

(d) Seismic safety of new building construction.

(1) The Intermediary Relending Program is subject to the provisions of Executive Order 12699 that requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(2) All new buildings financed with Agency IRP loan funds shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(i) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(ii) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(iii) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(3) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications shall be evidence of compliance with the seismic requirements of the appropriate code.

§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or supplement to a previous loan agreement must be executed by the intermediary and the Agency at loan closing for each loan. The loan agreement will be prepared by the Agency using Form RD 4274-4, "Intermediary Relending Program Loan Agreement," or Form RD 4274-5, "Intermediary Relending Program Supplemental Loan Agreement," and reviewed by the intermediary prior to loan closing.

(a) The loan agreement will, as a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

§ 4274.338(a) (Con.)

(3) The term and repayment schedule;

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default ;

(5) The disbursement procedure. Disbursement of loan funds by the Agency to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. For purposes of computing interest, the date of each draw down shall constitute the date the funds are advanced under the loan agreement ;

(i) The intermediary may initially draw up to 25 percent of the loan funds. If the intermediary does not have loans to ultimate recipients ready to close sufficient to use the initial draw, the funds must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed for such loans. The initial draw must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary. Any funds from the initial draw that have not been used for loans to ultimate recipients within 1 year from the date of the draw must be returned to the Agency as an extra payment on the loan. Agency IRP loan funds must not be used for administrative expenses ;

(ii) After the initial draw of funds, an intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances must be requested by the intermediary in writing. *The intermediary may use Form RD 440-11, "Estimate of Funds Needed for 30-day Period Commencing _____," to request the funds.*

(iii) *If it is necessary to return funds to the Agency in accordance with paragraph (a)(5)(i) of this section, the returned funds will be applied to the intermediary's loan according to the provisions of the promissory note for extra payments. Such returned funds will not be available to draw again. (Added 12-01-99, PN 313.)*

(6) The provisions regarding default. On the occurrence of any event of default, the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may become applicable;

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency;

(iii) The occurrence of;

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors, or;

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it;

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to Agency's original award.

§ 4274.338(a) (Con.)

(7) The insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption,

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(Added 12-01-99, PN 313)

(02-06-98) SPECIAL PN

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explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient funded from the IRP revolving fund and will be assigned or pledged to the intermediary and subsequently, in the event of request by the Agency following default by the intermediary, to the Agency. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with the State law.

(iv) Flood insurance. The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with subpart B of part 1806 of this chapter (FmHA Instruction 426.2).

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and officials. The Agency may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and property damage.

(A) The amount of fidelity bond coverage required by the Agency will normally approximate the total annual debt service requirements for the Agency loans;

(B) Other types of coverage may be considered acceptable if it is determined by the Agency that they fulfill essentially the same purpose as a fidelity bond;

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in reports required by paragraph (b)(4) of this section or other documentation;

(b) The intermediary will agree in the Loan Agreement:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of the Agency;

(2) Not to make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) To maintain a separate ledger and segregated account for the IRP revolving fund;

(4) To Agency reporting requirements by providing:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the IRP. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement;

§ 4274.338(b)(4)(i) (Con.)

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by OMB Circular A-128 or A-133 should submit audits made in accordance with those circulars ;

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(C) The reports will include, on a form provided by the Agency, (*Form RD 1951-4, "Report of IRP/RDLF Lending Activity"*) information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(5) Before the first relending of Agency funds to an ultimate recipient, to obtain written Agency approval of;

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments;

(ii) Intermediary's policy with regard to the amount and form of security to be required;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding;

(7) To secure the indebtedness by pledging the IRP revolving fund, including its portfolio of investments derived from the proceeds of the loan award, and pledging its real and personal property, and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the Agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) If any part of the loan has not been used in accordance with the intermediary's work plan by a date 3 years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. If any loan funds have not been used by 6 years from the date of the loan agreement, the approval will be canceled of any funds that have not been delivered to the intermediary and the

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intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Intermediary Relending Program promissory note (Form RD 4274-3, "*Intermediary Relending Program Promissory Note*"), regular loan payments will be based on the amount of funds actually drawn by the intermediary.

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§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency (Form RD 4274-1, "*Application for Loan (Intermediary Relending Program)*").

(2) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(i) Document the intermediary's ability to administer IRP in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(ii) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of IRP. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(v) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(vi) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to IRP;

(vii) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan;

(viii) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as jobs created for low-income area residents or self empowerment opportunities funded, and should relate to the purpose of IRP (see § 4274.301(b)); and

§ 4274.343(a)(2) (Con.)

- (ix) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary;
- (3) Environmental information on a form provided by the Agency (*Form RD 1940-20*) for all projects positively identified as proposed ultimate recipient loans that are Class I or Class II actions under subpart G of part 1940 of this title;
- (4) Comments from the State Single Point of Contact, if the State has elected to review the program under Executive Order 12372;
- (5) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving fund only and a separate set of projections that shows the proposed intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first 3 years, the projections for the IRP revolving fund must extend to include a year with a full annual installment on the IRP loan;
- (6) A written agreement of the intermediary to the Agency audit requirements;
- (7) An agreement on a form provided by the Agency (*Form RD 400-4, "Assurance Agreement,"*) assuring compliance with Title VI of the Civil Rights Act of 1964;
- (8) Complete organizational documents, including evidence of authority to conduct the proposed activities;

(9) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs;

(10) Latest audit report, if available;

(11) A form provided by the Agency (*Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts"*) in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;

(12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions (*Form AD-1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions."*); and

(13) A statement on a form provided by the Agency (*Exhibit A-1 of RD Instruction 1940-Q*) regarding lobbying, as required by 7 CFR part 3018.

(b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:

(1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and

(3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§ 4274.344 Filing and processing applications for loans.

(a) Intermediaries' contact. Intermediaries desiring assistance under this subpart may file applications with the state office for the state in which the intermediary's headquarters is located. Intermediaries headquartered in the District of Columbia may file the application with the National Office, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250-1521.

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(b) Filing applications. Intermediaries must file the complete application, in one package. Applications received by the Agency will be reviewed and ranked quarterly and funded in the order of priority ranking. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

(c) Loan priorities. Priority consideration will be given to proposed intermediaries. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (c)(1) through (c)(6) of this section. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost - 5 points;

(B) At least 25% but less than 50% of the total project cost - 10 points; or

(C) 50% or more of the total project cost - 15 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-Agency derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project costs - 5 points;

(B) At least 25% but less than 50% of total project costs - 10 points; or

(C) 50% or more of total project costs - 15 points.

(2) Employment. For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:

- (A) At least 150% but not more than 175% - 5 points;
- (B) At least 125% but less than 150% - 10 points; or
- (C) Below 125% - 15 points.

(ii) The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide non-metropolitan median household income. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):

- (A) At least 50% but less than 75% - 5 points;
- (B) At least 75% but less than 100% - 10 points; or
- (C) 100% - 15 points.

(iii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

- (A) At least 100% but less than 125% - 5 points;
- (B) At least 125% but less 150% - 10 points; or
- (C) 150% or more - 15 points.

(iv) The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

§ 4274.344(c)(2)(iv) (Con.)

(A) At least 10% but less than 20% of the workforce - 5 points;

(B) At least 20% but less than 30% of the workforce - 10 points; or

(C) 30% of the workforce or more - 15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary's record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups:

(A) At least 10% but less than 20% - 5 points;

(B) At least 20% but less than 30% - 10 points; or

(C) 30% or more - 15 points.

(vi) The population of the service area according to the most recent decennial census was lower than that recorded by the previous decennial census by the following percentage:

(A) At least 10 percent but less than 20 percent - 5 points;

(B) At least 20 percent but less than 30 percent - 10 points; or

(C) 30 percent or more - 15 points.

(3) Intermediary contribution. All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:

(i) At least 5% but less than 15% - 15 points;

(ii) At least 15% but less than 25% - 30 points; or

(iii) 25% or more - 50 points.

(4) Experience. The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

- (i) At least 1 but less than 3 years - 5 points;
- (ii) At least 3 but less than 5 years - 10 points;
- (iii) At least 5 but less than 10 years - 20 points; or
- (iv) 10 or more years - 30 points.

(5) Community representation. The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:

- (i) At least 10% but less than 40% of the board members are community representatives - 5 points;
- (ii) At least 40% but less than 75% of the board members are community representatives - 10 points; or
- (iii) At least 75% of the board members are community representatives - 15 points.

(6) Administrative. The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that may be considered are the amount of funds requested in relation to the amount of need; a particularly successful business development record; a service area with no other IRP coverage; a service area with severe economic problems, such as communities that have remained persistently poor over the last 60 years or have experienced long-term population decline or job deterioration; a service area with emergency conditions caused by a natural disaster or loss of a major industry; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of a previous IRP loan. *An assignment of points by the Administrator will be by memorandum stating the Administrator's reasons, and that memorandum will be maintained in the files of the National Office.*

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§ 4274.349 Agency evaluation of application.

(a) Within 5 days of receipt of an IRP application, the Processing Officer must notify the National Office, Specialty Lender Division, by telephone and by memorandum of the date the application was received, the name and address of the proposed intermediary and the amount of loan requested. A priority scoresheet must be completed and mailed to arrive in the National Office, Specialty Lenders Division, no later than the end of the first month following the end of the fiscal quarter in which the application was received.

(b) The Processing Office will input the necessary data via terminal screens into the Rural Community Facility Tracking System. If the Processing Officer so desires, a Form RD 2033-34, "Management System Card - Business and Industry," may be prepared in accordance with RD Instruction 2033-F.

(c) Applications will be organized in a loan file in accordance with RD Instruction 2033-A. The intermediary's Internal Revenue Service tax number preceded by State and county code numbers will constitute the case number to be used on all Agency forms.

(d) The Processing Office will complete Form RD 4274-2, "IRP Project Summary," evaluate the application, complete an environmental assessment, and make a determination whether: the intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to provide the loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan.

§ 4274.350 Letter of conditions.

If the Agency is able to make the loan, it will provide the intermediary a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the form provided by the Agency indicating the intermediary's intent to meet the conditions (Form RD 1942-46, "Letter of Intent To Meet Conditions,"). If certain conditions cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance.

(a) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verification requirements, disbursement of funds, security requirements, and audit reports required.

(b) The letter of conditions will contain the following paragraphs:

"This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project or intermediary must be reported to and approved by USDA by written amendment to this letter. Any changes not approved by USDA shall be cause for discontinuing processing of the application."

"This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed \$_____."

"You must certify at loan closing that since the Agency's issuance of the letter of conditions there has been no material changes in your financial condition nor any other material change in the intermediary."

"The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you."

"Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application."

"If the conditions set forth in this letter are not met within _____ days from the date hereof, the Agency reserves the right to discontinue the processing of the application. You will be notified, in writing, by the Agency of any such discontinuance."

(c) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, the Processing Officer will notify the proposed intermediary in writing of the reasons why the request was not favorably considered. The notification to the proposed intermediary will state that a review or appeal of this decision by the Agency may be requested by the proposed intermediary in accordance with USDA appeal regulations.

§ 4274.355 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of the obligation of funds document (*Form RD 1940-1*) is mailed to the intermediary. The approving official may request an obligation of funds when available and according to the following:

(a) The obligation of funds document (*Form RD 1940-1*) may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan and to enter into required agreements, and has signed the obligation of funds document (*Form RD 1940-1*).

(b) An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

(c) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of *Form RD 1940-1*.

(d) The approving official will request an obligation of loan funds, after signing *Form RD 1940-1*, via the Agency field office terminal system. The requesting official will record the date and time of request, and initial on the original *Form RD 1940-1*.

(e) The obligation date and date the intermediary is notified of loan approval by mailing the *Form RD 1940-1* is 6 working days from the date funds are reserved unless an exception is granted by the National Office.

(f) Immediately after verifying that funds have been reserved, utilizing the Agency field office terminal system status inquiry function, the Processing Officer will notify the Legislative Affairs Staff in the National Office as required by RD Instruction 2015-C.

(g) The Processing Officer will record the date of intermediary notification on the original of *Form RD 1940-1* and include it as a permanent part of the official file.

(h) If a transfer of obligation of funds is necessary, complete Form RD 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and mail a copy to the Finance Office.

§ 4274.356 Loan closing.

(a) At loan closing, the intermediary must certify to the following:

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material change in the intermediary nor its financial condition since the issuance of the letter of conditions. If there have been changes, they must be explained. The changes may be waived, at the sole discretion of the Agency.

(4) That no claim or lien of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(b) The Processing Officer will approve only minor changes which do not materially affect the project, its capacity, employment, original projections, or credit factors. Changes in legal entities or where tax consideration are the reason for change will not be approved.

(c) Loan closing documents will normally include, but are not limited to, Form RD 4274-3, Form RD 4274-4, (or Form RD 4274-5) a financing statement, a security agreement, and an IRP revolving loan fund agreement.

(d) To ensure the provisions of the loan agreement conform with the current regulations, Form RD 4274-5 should only be used when the borrower has a previous loan agreement on Form RD 4274-4. If the borrower's only previous IRP loan was closed with a loan agreement in a format other than Form RD 4274-4, Form RD 4274-4, rather than Form RD 4274-5, should be used for the subsequent loan. Form RD 4274-5 should always refer to a previous loan agreement on Form RD 4274-4.

(Added 12-01-99, PN 313.)

(e) After the loan has been approved, the Processing Office will prepare the promissory note and loan agreement for review by the Regional OGC and the intermediary. (Renumbered 12-01-99, PN 313.)

§ 4274.356 (Con.)

(f) The Processing Office will forward the appropriate loan docket items to the OGC office in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, the Processing Office will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review and indexed and tabbed. OGC will review the docket, furnish advice on noted deficiencies, and issue closing instructions. Loans will be closed by the Processing Office with such assistance of the Regional Attorney as is needed.

(Renumbered 12-01-99, PN 313.)

(g) In all cases, the Processing Officer will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and loan agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports.

(Renumbered 12-01-99, PN 313.)

(h) Agency personnel shall not sign any documents other than those specifically provided for in this Instruction.

(Renumbered 12-01-99, PN 313.)

(i) When the loan has been closed the Processing Officer will submit the security instruments, other documents used in closing, and a statement that administrative requirements have been met to the Regional Attorney. The Regional Attorney will review the submitted material and determine whether all legal requirements have been met.

(Renumbered 12-01-99, PN 313.)

§§ 4274.357 - 4274.360 [Reserved]**§ 4274.361 Requests to make loans to ultimate recipients.**

(a) An intermediary may use revolved funds to make loans to ultimate recipients without obtaining prior Agency concurrence. When an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient, and prior to final approval of such loan, Agency concurrence is required.

(b) A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(1) Certification by the intermediary that:

- (i) The proposed ultimate recipient is eligible for the loan;
 - (ii) The proposed loan is for eligible purposes;
 - (iii) The proposed loan complies with all applicable statutes and regulations;
 - (iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and
 - (v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;
- (2) For projects that meet the criteria for a Class I or Class II environmental assessment or environmental impact statement as provided in subpart G of part 1940 of this title, a completed and executed request for environmental information on a form provided by the Agency (*Form RD 1940-20*);
- (3) All comments obtained in accordance with § 4274.337(a), regarding intergovernmental consultation;
- (4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:
- (i) Name and address of the ultimate recipient;
 - (ii) Loan purposes;
 - (iii) Interest rate and term;
 - (iv) Location, nature, and scope of the project being financed;
 - (v) Other funding included in the project; and
 - (vi) Nature and lien priority of the collateral.
- (5) Such other information as the Agency may request on specific cases.

§ 4274.361 (Con.)

(c) Upon receipt of a request for concurrence in a loan to an ultimate recipient from Agency IRP loan funds the Agency will:

(1) Review the material required by paragraph (b) of this section for completeness and compliance with regulations;

(2) Complete an environmental review in accordance with RD Instruction 1940-G, including public notice requirements and provisions for mitigation measures as appropriate. This review will be conducted by the Agency in the same manner it would be conducted if the Agency were considering a direct loan to the ultimate recipient. The results of the environmental review will be used by the Agency in making its decision on the request for loan concurrence;

(3) Consider any comments received through the intergovernmental consultation process in accordance with RD Instruction 1940-J;

(4) When all requirements have been met, issue a letter concurring in the loan; and

(5) If the Agency determines it is unable to concur in the loan, the intermediary will be notified in writing and given the reasons for denial.

(d) Requests for concurrence in a loan to an ultimate recipient and all directly related material should be filed in four or eight position continuation folders with one folder position devoted to each ultimate recipient.

§§ 4274.362 - 4274.372 [Reserved]

§ 4274.373 Appeals.

Any appealable adverse decision made by the Agency which affects the intermediary may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4274.374 - 4274.380 [Reserved]

§ 4274.381 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest. *Requests for exceptions must be in writing by the State Director. Requests must be supported with documentation to explain the adverse effect on the Agency's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.*

§ 4274.382 Exhibits.

The following documents may be used in connection with this subpart;

- (a) Exhibit A, "Checklist - Intermediary Relending Program Loan to Intermediary."*
- (b) Exhibit B, "Checklist - Intermediary Relending Program Loan to Ultimate Recipient."*
- (c) Exhibit C, "Priority Scoresheet."*
- (d) Exhibit D, "Sample Loan Agreement Amendment."*
(Added 08-05-98, PN 294.)

§§ 4274.383 - 4274.399 [Reserved]

§ 4274.400 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570-0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Attachments: Exhibits A, B, C and D.

CHECKLIST
INTERMEDIARY RELENDING PROGRAM LOAN TO INTERMEDIARY

Intermediary: _____

Loan Processing

<i>Item No.</i>	<i>Document/Action</i>	<i>Form/Reference/Comments</i>
1	<i>Application For Loan (Intermediary Relending Program)</i>	<i>Form RD 4274-1</i>
2	<i>Work Plan</i> <i>[Work plans should address the following items: Ability to administer/personnel _____ Financial resources_____</i> <i>Need for funds_____</i> <i>Fees and charges_____</i> <i>Commitments of financial support_____</i> <i>Record of obtaining funds_____</i> <i>Detailed relending plans_</i> <i>Goals, strategies, anticipated outcome_____</i> <i>Technical assistance_____]</i>	<i>§ 4274.343(a)(2)</i>
3	<i>Request for Environmental info. (if applicable)</i>	<i>Form RD 1940-20</i>
4	<i>Intergovernmental comments</i>	<i>§ 4274.343(a)(4)</i>
5	<i>Financial statements and projections</i>	<i>§ 4274.343(a)(5)</i>
6	<i>Audit agreement</i>	<i>§ 4274.343(a)(6)</i>
7	<i>Assurance Agreement</i>	<i>Form RD 400-4</i>
8	<i>Organizational documents</i>	<i>§ 4274.343(a)(8)</i>
9	<i>Other credit documentation</i>	<i>§ 4274.343(a)(9)</i>

Loan Processing (Con.)

[illegible]

Loan Closing

<i>Item No.</i>	<i>Document/Action</i>	<i>Form/Reference/Comments</i>
1	<i>Request for closing instructions</i>	§ 4274.356(e)
2	<i>Promissory Note</i>	<i>Form RD 4274-3</i>
3	<i>Loan Agreement</i>	<i>Form RD 4274-4 or Form RD 4274-5</i>
4	<i>Collateral documents</i>	§ 4274.356(c)
5	<i>Revolving Fund Agreement</i>	§ 4274.356(c)
6	<i>Other</i>	
7	<i>Receipt of closing instructions</i>	§ 4274.356)(e)
8	<i>Certification, no change in work plan</i>	§ 4274.356(a)(1)
9	<i>Certification, letter of conditions</i>	§ 4274.356(a)(2)
10	<i>Certification, adverse change</i>	§ 4274.356(a)(3)
11	<i>Fidelity bond coverage</i>	§ 4274.338(a)(7)(v)
12	<i>Post closing, OGC</i>	§ 4274.356(h)

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CHECKLIST
INTERMEDIARY RELENDING PROGRAM LOAN TO ULTIMATE RECIPIENT

INTERMEDIARY: _____

ULTIMATE RECIPIENT:

NAME: _____

LOCATION: _____

TYPE OF BUSINESS: _____

USE OF FUNDS:

PURPOSE	IRP FUNDS	OTHER FUNDS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	_____	_____

SOURCE OF OTHER FUNDS: _____

SECURITY: _____

INTEREST RATE: _____ TERM: _____

INTERGOVERNMENTAL REVIEW COMMENTS: RECEIVED? _____

ADVERSE COMMENTS? _____ (if yes, attach explanation)

ENVIRONMENTAL REVIEW:

COMPLETED? _____

LEVEL: Exclusion___ Class I___ Class II___

DETERMINED NO SIGNIFICANT ADVERSE IMPACT? _____

CERTIFICATIONS BY INTERMEDIARY (§ 4274.361(a)(2)):

Eligible recipient_____, Eligible purpose_____,
Complies with statutes and regulations_____, Other credit_____,
No conflict of interest_____.

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PRIORITY SCORESHEET

Applicant: _____

State: _____

List the maximum points the applicant is eligible for in each category, in accordance with § 4274.344(c) of this Instruction.

(1) Other Funds:

(i) Outside loan and grant funds.
Percent _____ Points _____

(ii) Intermediary funds.
Percent _____ Points _____

Total other funds points (Max. 25) _____

(2) Employment:

(i) Updated median household income, service area _____
Poverty line, family of four _____
Percent _____ Points _____

(ii) Income within State.
Percent _____ Points _____

(iii) Unemployment rate, service area _____
Unemployment rate, National _____
Percent _____ Points _____

(iv) Low-income families
Percent _____ Points _____

(v) Underrepresented groups
Percent _____ Points _____

(vi) Outmigration
Percent _____ Points _____

Total employment points (Max.90) _____

(3) <i>Intermediary contribution:</i> <i>Percent</i> _____	<i>Points (Max. 50).....</i> _____
(4) <i>Experience:</i> <i>Years</i> _____	<i>Points (Max. 30).....</i> _____
(5) <i>Community representation:</i> <i>Percent</i> _____	<i>Points (Max. 15).....</i> _____
(6) <i>Administrative:</i>	<i>Points (Max. 35).....</i> _____
<i>TOTAL POINTS.....</i> _____	

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SAMPLE LOAN AGREEMENT AMENDMENT

This amends the loan agreement executed by the (insert name of intermediary) and the United States Department of Agriculture (USDA) on (insert date of original loan agreement) for an Intermediary Relending Program (IRP) Loan in the amount of (insert original amount of IRP loan).

Effective from this date forward, the loan referenced above will be covered by and serviced according to the rules and regulations governing the IRP (as they may be amended) located at 7 CFR part 4274, subpart D, and such regulations will, for the above referenced loan, supersede the regulations governing the IRP located at 7 CFR 1948, subpart C, that were in effect when the original loan agreement was signed. Any provisions of the loan agreement in conflict with the later regulation are hereby amended to conform to such regulation.

INTERMEDIARY

(INSERT NAME OF INTERMEDIARY)

BY: _____
(INSERT PRINTED OR TYPED NAME)

TITLE: _____

DATE: _____

USDA

BY: _____
(INSERT PRINTED OR TYPED NAME)

TITLE: _____

DATE: _____

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